



Consent (“AOC”) that Engelhard entered into with EPA regarding Engelhard’s Plainville, Massachusetts Facility, constitutes an “administrative settlement” within the meaning of Section 113(f)(3)(B).

2. On May 9, 2006, the Court approved the parties’ joint proposed briefing schedule, which calls for the following:

- a. July 17, 2006 — United States’ opening brief (not to exceed 35 pages).
- b. August 17, 2006 — Engelhard’s brief in opposition (35 pages).
- c. August 31, 2006 — United States’ reply brief (10 pages).

In addition, the current briefing schedule provides that if Engelhard wishes to file a motion of its own regarding the Fourth Cause of Action, it can do so under the briefing schedule and format pertaining to the United States’ motion.

3. The question whether a particular administrative settlement is sufficient to give rise to a right of contribution under Section 113(f)(3)(B) is one that has traditionally received little attention by litigants and courts. Thus, the preparation of the United States’ motion on this issue requires especially careful research, drafting, review, and coordination.

4. Undersigned counsel for the United States has been engaged in drafting the United States’ opening brief. However, additional time is required for review, coordination, and approval of the motion, both within the Department of Justice and within other federal agencies, including the EPA, which administers and enforces CERCLA.

5. Undersigned counsel recognizes that a considerable period time — more than two months — have passed since the Court approved the parties joint briefing schedule. However, in addition to preparing the United States’ brief for this case, undersigned counsel has been

substantially engaged in drafting motions and a merits brief for EPA in State of Maine v. Johnson (1st Cir. No. 04-1363), and Penobscot Nation v. EPA (1st Cir. No. 04-1375), which are consolidated petitions for review of an EPA action under the Clean Water Act. Thus, the preparation of a consolidated merits brief for EPA, which responds to two separate, normal-length petitioners' briefs (14,000 words each), one intervenor-petitioner brief of 7,000 words, and two amici briefs, has caused some delay in the preparation of the United States' brief in the instant case.

6. Undersigned counsel has also been randomly selected for jury duty by the D.C. Superior Court, which requires him to appear on July 17, 2006, at 10:00 a.m. for possible selection to a petit jury.

7. Additionally, the EPA enforcement attorney who is most familiar with the administrative order (AOC) that was entered into by Engelhard and EPA has been on personal leave since July 7, 2006, and will not return to work until July 25, 2006. Given the need for this attorney to review a final draft of the United States' motion before it is filed, a limited extension of time is requested.

8. The extension of time sought through this motion will not substantially delay this case, particularly since the resolution of validity of Engelhard's CERCLA Section 113(f)(3)(B) claim will clarify, and potentially simplify the scope of the parties' discovery efforts.

9. The consented to proposed revised briefing schedule is as follows:

<u>Party/Brief</u>	<u>Current Filing Date</u>	<u>Revised Filing Date</u>
United States' Opening Brief (35 pgs.)	July 17, 2006	<b>August 4, 2006</b>
Engelhard's Opposition Brief (35 pgs.)	August 17, 2006	<b>September 1, 2006</b>
United States' Reply Brief (10 pgs.)	August 31, 2006	<b>September 15, 2006</b>

In addition, should Engelhard wish to file a motion of its own, it would follow the same revised briefing schedule. Aside from the revised filing dates set forth here, the parties will be otherwise bound by the terms of the May 9, 2006, order that approved the parties' original proposed briefing schedule and format.

10. Counsel for Engelhard has indicated that Engelhard does not oppose the relief sought in this motion.

For the foregoing reasons, the Court should approve the United States' motion to amend the briefing schedule and format regarding Engelhard's Fourth Cause of Action.

SO ORDERED this \_\_\_\_\_ day of July 2006.

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The Honorable Joseph L. Tauro  
United States District Judge

Respectfully submitted,

July 14, 2006

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/s/ Stephen E. Crowley  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of July, 2006, I served a true and correct copy of the foregoing "Joint Proposed Order" on the following counsel of record, by ECF filing, as follows:

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